

TOWN COUNCIL OF LEO-CEDARVILLE
MEETING MINUTES
MARCH 17, 2009

ATTENDANCE:

John Clendenen – Council Vice-President

Gordon Liechty, Jr.

Michael Young

John Eastes

Pamela Spannuth – Clerk-Treasurer, Peggy Garton – Town Administrator, Pat Proctor –
Town Attorney

7:00 – Council Vice-President Clendenen opened the meeting with the pledge of allegiance.

AGENDA – Mr. Eastes moved to adopt the agenda with flexibility; motion carried unanimously.

MINUTES – The March 3, 2009 meeting minutes were approved with grammatical corrections.

PROPOSED NOISE ORDINANCE 2009-01 – Mr. Eastes asked if anyone present wished to hear a complete reading of the ordinance; no requests were voiced. Mr. Eastes moved to waive the complete reading of the ordinance. Mr. Clendenen seconded; the motion passed unanimously among those present. Mr. Eastes asked Mr. Proctor what the potential negative impact this ordinance could have on Cedar Creek Produce, and if it would it be beneficial to have more specific exemptions. Mr. Proctor discussed the pros and cons of having specific exemptions and referred to a recent case where part of the Indianapolis noise control ordinance was struck down. He stated that although the term “reasonable” is sometime difficult to define, it is a term recognized in court. The use of “reasonable” enables the council, code enforcement officer, law enforcement, and courts room for additional input and clarity. He further stated that he utilized both the town’s ordinance and other existing municipal noise ordinances to author the proposed ordinance under consideration. He did intentionally draft some “certainty” within the ordinance to help eliminate some of the ambiguity of the existing ordinance. An ordinance that is too loose places a large burden on those who have to judge what is considered a violation. His recommendation would be to leave in some of the enumerated specific definitions and exemptions as they provide clarity.

He stated that the ordinance could prohibit the use of the propane cannon within certain hours and possibly during all times if it is determined that the noise emitted by the cannon is “unreasonable”. It could also prohibit the use of farming equipment and other business activities between the hours of 10 pm and 6 am if determined that the audible disturbance caused is considered “unreasonable”.

Mr. Young asked for input and opinions from Ms. Amy Slentz regarding this ordinance. She does not feel that the current use of propane cannon is “unreasonable” as

they have significantly reduced the amount of time it's in use. She also stated that the cannon is not in the town and it would only affect the business if the council can enforce the ordinance outside the town limits as stated by the town attorney.

Mr. Proctor recommends that the council keep the citation that the ordinance is enforceable for a 1-mile range outside the boundary. He stated that this is a right that the town has and is a tool for protecting the welfare of the town from offences immediately outside the town boundary.

Mr. Clendenen stated that he supports the ordinance exactly as written. He feels that it recognizes the businesses but also recognizes the grievances that have been brought to the council.

Mr. Liechty asked Mr. Proctor if the ordinance could be enforced outside the boundary if and when another incorporated entity annexes right up to the town boundary. Mr. Proctor was uncertain how that would play out in court but stated the town would definitely not lose their authority within the corporate boundary of the town. You can only prohibit conduct that would impact the health and welfare of the incorporated area outside of the corporate limits. Mr. Liechty questioned sections D(1)a and D(2) and feels that they are too restrictive. Mr. Proctor clarified that those paragraphs are specific to the offence they relate to. Mr. Liechty moved to strike Halloween from section E(4) as an exempted holiday; Mr. Eastes seconded. The motion passed unanimously.

Mr. Eastes referenced E(10) and E(11) and stated his concern that the ordinance could have a negative impact on specific farming practices. Mr. Proctor suggested changing the word usage from farming 'vehicles' to farming 'equipment'.

Mr. Eastes moved to add an item E(12) stating 'Equipment used in an agricultural operation'. Mr. Proctor expressed concern about exempting agricultural operations and not construction equipment. Mr. Liechty seconded the motion for the sake of discussion. Mr. Eastes stated that a contractor who may be working on a project is not the same thing as a resident farmer who is established in the town. Ms. Spannuth discussed the need to have a "tool" in place for the town's administration to use when there are legitimate complaints filed. Mr. Ken Litzenburg, town police officer, agreed that a well-defined ordinance would be a valuable tool for enforcement purposes. Ms. Garton stated that there have been no prior complaints against Cedar Creek Produce and that the community does embrace the existence of the farm. Mr. Clendenen stated that he was the councilman that requested a tighter noise ordinance and is very pleased with the new ordinance currently under consideration. He respects the response by Cedar Creek Produce to reduce the amount of time that the cannon is used, but the council should also have consideration for those residents who have expressed their complaints. Mr. Proctor stated that there needs to be a rational basis for exempting farm equipment and not construction equipment. Discussion ensued relating to recognizing farm/agricultural equipment vs. construction equipment. Mr. Eastes stated he would like to remove the motion to add item E(12); Mr. Liechty agreed.

Mr. Eastes moved to change the word 'vehicles are' to "equipment is" within section 11; Mr. Liechty agreed. The amendment carried by a unanimous vote.

Mr. Proctor recommend that the council change D(3) from 7 seconds to 3 seconds. Mr. Clendenen moved to change D(3) from 7 seconds to 3 seconds as

recommended by Mr. Proctor; Mr. Eastes seconded; amendment passed by unanimous vote.

Mr. Clendenen moved to adopt Ordinance 2009-01 as amended; Mr. Liechty seconded. The motion passed unanimously.

PROPOSAL TO REDUCE TAP FEE – Mr. Proctor addressed the proposed agreement to lower tap fees as drafted by Pioneer Water. He cautioned the council against entering into the agreement presented, as it would effectively reduce what the town would recover from the utility. He further disagreed that the original agreements have an expiration date of 10 years. Mr. Liechty referenced a section of the Indiana Code that he states deals with these types of agreements. He stated that the code states that if both parties agree, the payback could be forfeited and further addressed the way the regulation views extensions. He also stated that the regulation does cite a ten-year limitation on such agreements. If in fact there were a ten-year limitation stating that the town loses its right to reimbursement, Mr. Proctor stated he would support a reduction of the tap fee. He will research this issue and clarify what the applicable statute specifies.

Mr. Clendenen moved to table further discussion until the ten-year limitation is defined; Mr. Eastes seconded. The motion to table passed unanimously.

STORAGE AGREEMENT – Mr. Proctor is currently working with Mr. Robin Liechty regarding amending the proposed storage agreement. This agreement will be on the next agenda. Mr. Clendenen moved to table the agreement; Mr. Liechty seconded. Motion to table the agreement until the next meeting passed unanimously.

FINANCIAL REPORT – Ms. Spannuth provided the financial report showing the February 28, 2009 fund balances.

UNLIMITED GARBAGE PICK UP – Ms. Garton announced that the date for the first unlimited garbage pick-up is April 11th.

TOWN WIDE GARAGE SALE – The town wide garage sale dates are May 21, 22 and 23.

ADA HANDRAILS – Other options for ADA compliance are being looked into. The council unanimously voted to table this topic until additional information is available.

YARD DEBRIS CLEAN UP – Ms. Garton proposed that the town establish a drop off site again at the town's Schwartz Road property. Since funds are limited due to the ice storm clean up, she does not recommend that a curb-side pickup be done this spring. She recommends that the town open the Schwartz Road drop off site and advertise that local contractors are available for hire. Ms. Spannuth stated that the town has already exhausted the budget for right of way maintenance. Mr. Eastes supported the recommendation that the town forego a curbside pickup due to that fact and that a drop off site be established and that a list of contractors be advertised. No council objections were voiced.

STREET IMPROVEMENT SUBCOMMITTEE – There is no new information as the committee is waiting for feedback on the status of any stimulus funds. Mr. Clendenen suggested that the council consider a resurface of Amstutz Road from Holser Road, south to the new asphalt by CVS; the road has become a high maintenance area as six tons of cold mix has been used on this road alone to deal with the pot-holes. Milling and resurfacing the road would improve the condition enough to give the town at least five more years to plan for a major improvement project on this road.

RIVERSIDE GARDENS RESTROOM – Topic will be on the next agenda.

BRIDGE FUNDING DISCUSSION – Mr. Clendenen stated that he is scheduled to attend an upcoming bridge task force meeting. There is a bill currently under consideration stating that all bridges should be the responsibility of the county; funding for the proposal is to be property tax driven. Mr. Clendenen asked the council their opinion regarding another proposal to increase the wheel/surtax to support the funding of bridges. All councilmen present stated they would not support an increase in the wheel/surtax with the exception of Mr. Clendenen who stated that the burden of funding bridges would be appropriately placed on the users.

ORDINANCE 2009-02 – CREATION OF SOLID WASTE SERVICES FUND – Mr. Liechty moved to waive a complete reading of proposed ordinance 2009-02. Mr. Eastes seconded upon hearing no requests from those present. The motion to waive the reading passed unanimously. Mr. Eastes moved to adopt ordinance 2009-02; Mr. Young seconded. The ordinance was adopted by unanimous vote.

LIST OF NON-PROFIT CUSTOMER BASE AND FEE – Mr. Eastes requested that he be provided with a list of the current list of not for profit customers and the annual fees paid. This will be provided as soon as the list is compiled.

VOUCHERS – The March 17, 2009 line item voucher form was approved.

ADJOURNED – The meeting was adjourned until April 7, 2009.

APPROVED:

ATTEST: